IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 58 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KESHUPURI GULABPURI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 58 of 1995

MR BD KARIA for Petitioner No. 1

Ms N V Joshi, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 24/03/2003

ORAL JUDGEMENT

The petitioner above-named has preferred this revision application under section 397 read with section 401 of the Code of Criminal Procedure, 1973 (for short, 'the Code') in order to challenge the judgment and order dated 17.2.1995 recorded by the learned Addl.Sessions

Judge, Bhavnagar in criminal appeal No.22/93 under which the learned Judge dismissed the said appeal of the present petitioner and confirm the judgment and conviction order passed by the learned Judicial Magistrate First Class, Vallbhipur in criminal case No.102 of 1988 convicting the present petitioner for offences punishable under section 279, 337, 338 and 304-A of IPC. and sentencing him to suffer as follows:

i. For offence punishable under section 304-A of IPC, S.I. for two months and fine of Rs. 300/-. In default of payment of fine, further S.I. for 15 days.

ii. For offence punishable under section 337 of IPC, fine of Rs.100/- and in default of payment of fine, further S.I. for 10 days.

iii. For offence punishable under section 338 of IPC, fine of Rs.100/- and in default of payment of fine, S.I. for 10 days.

iv. For offence punishable under section 279 of IPC, fine of Rs.500/- and S.I. for one month and in default of payment of fine, further S.I. for 15 days.

2. The facts of the case against the petitioner may be briefly stated as follows:

That on 6.3.1988 at 11 a.m. the petitioner was driving his Motor car bearing No.GTS 5217 on Bhavnagar -Ahmedabad Highway. When he was going between village Chamardi and Dhandhali, according to the case of the prosecution, he was driving his car so rashly or negligently so as to endanger human life or personal safety of others, that he tried to overtake an ongoing vehicle and while undertaking the process of overtaking, his car dashed against a S.T. bus coming from opposite direction. With the result that one Jayantilal Chunilal who was travelling in the said vehicle, sustained grievous hurts and on account of the said injuries he died. Even other persons travelling in the said vehicle sustained grievous/simple hurts. Therefore, it was alleged against the petitioner that the petitioner caused death to the said Jayantilal and caused simple injuries and grievous hurts to other persons by the said rash and negligent act of driving. FIR was lodged and investigation was undertaken and charge sheet was filed. The learned Magistrate conducted the aforesaid criminal case and after following the due procedure of law, the

learned Magistrate convicted the petitioners for the aforesaid offence and sentenced him as aforesaid.

4. Feeling aggrieved by the said judgment and conviction order of the learned Magistrate, the present petitioner preferred criminal appeal No.22/93 unsuccessfully. Hence this revision application.

5. In the present revision application, it has been contended by the learned Advocate for the petitioner that the judgments and orders of the two courts below are illegal. That the trial court has misread the report of the R.T.O. at exh.42. That in fact the accident took place on account of failure of brakes and, therefore, no offence could be said to have been proved against the petitioner and, therefore, the judgments and orders of the two courts below are illegal and perverse and deserve to be set aside. The petitioner has, therefore, prayed that the present revision application be allowed and the judgments and orders of the two courts below be set aside and the petitioner be acquitted of the aforesaid offence.

6. Rule was issued and during the hearing, Ms N V Joshi, learned APP has appeared on behalf of the State. I have heard Mr B D Karia, learned Advocate for the petitioner and Ms N V Joshi, learned APP for the State. In fact, original Records and Proceedings were called for. Learned Advocate for the petitioner took me through the said records.

7. Learned Advocate for the petitioner has argued that as per the report of the RTO, brakes of the vehicle had failed and, therefore, there was no fault on the part of the petitioner and no negligence could be attributed to him. On a bare reading of the report at Exh.42, it can be gathered that the "brakes were not applying and connection of the brakes were in order". This shows that the entire link and joint of the brake were intact. In other words, as the link has not been broken, the brake was in order. Mr B D Karia, learned Advocate wanted to interpret the words "brakes not applying" as brake could not be applied or that the brakes had failed. The Learned Magistrate as well as the learned Sessions Judge appear to have taken a view that this clearly means that the petitioner had not applied the brake. In fact the "brakes not applying" would not be the correct English representation. The real sense and meaning of the said term would be that the "brakes were not applied by the petitioner". The two courts below have taken the above view and there is no reason to take a view different from the view recorded by the two courts below. When the

petitioner was in the process of overtaking an on going vehicle and when he saw the other vehicle coming from the opposite direction, then he had to apply the brake to stop his vehicle. It is the case of the prosecution that the brakes were not applied by the petitioner and it has been supported by the report of the RTO at Exh.42 as aforesaid. In the light of the above background, it has to be held that the meaning of the said term would be that "the brakes were not applied by the petitioner". Once the brakes were not found to have been applied by the petitioner, it was ex-facie negligent in driving of the vehicle on a public road. An attempt was, also made to show that the petitioner had given light signal to the opposite vehicle so that the opposite vehicle could be made to a stop. Now, when the said vehicle was very near and in a very near proximity, giving of light signal cannot take the petitioner out of the clutches of law. He could not give the said signal at a very late moment and at that time, the driver of the opposite vehicle may not have any time to apply brake and stop his vehicle. On the contrary, it was the duty of the petitioner to first ascertain, before overtaking an on going vehicle as to whether or not the right hand side of the ongoing vehicle is clear and no vehicle is coming from the opposite direction. This was not done by him and, therefore, he found it difficult to overtake an on going vehicle. The petitioner was totally negligent with respect to the vehicle coming from the opposite direction. The two courts below have recorded the findings of fact that the defence that the brake had failed was not an acceptable defence. The said observation has been made on the strength of the above observation and the report of the RTO at Exh.42. Therefore, the said findings may not be said to be against the evidence on record and, therefore, the said findings cannot be regarded as illegal.

8. In above view of the matter, there was sufficient material before the two courts below in order to hold the petitioner guilty for rash and negligent driving on a public road. At the end of the argument, Mr B D Karia, learned Advocate for the petitioner, has contended that the petitioner may be extended benefit of probation with a view to save the wife and children of the petitioner from being placed to an adversity. In my opinion, when a serious offence of rash and negligent driving has been proved and when a person has died on account of the said rash and negligent driving and other persons have received grievous and simple injuries, then in that event, it would not be proper for this court to consider the case of granting benefit of probation to the

petitioner. It is also required to be considered that road accidents have been increased to a considerable extent. If lenient view is taken against such an accused, then such offences would further increase. Therefore, deterrent punishment is required to be inflicted on such accused persons. On the contrary, in my view, the learned Magistrate has taken a very lenient view in imposing simple imprisonment of two months only for offence punishable under section 304-A of IPC. and the sentence imposed is on the side of leniency, no further leniency is required to be shown to the petitioner.

9. In above view of the matter, this being a revisional jurisdiction, powers and functions of this court are very limited and unless it is found that the judgments and orders of the two courts below are patently illegal and against the weight of evidence, it would not be possible for this court to interfere with the said judgments and conviction orders and the findings of fact recorded by the two courts below cannot be lightly brushed aside.

10. Learned Advocate for the petitioner has now cited certain decisions for being considered by this Court. Case of A P Raju v. State of Orissa, reported in 1995 (2) SCC 385 was the first one to be cited by him. There the incident has taken place 15 years back and the appellant was on bail for about 8 years and, therefore, the provisions contained in section 360 of the said Code was pressed into service.

10.1. In second case of State of Haryana v. Prem Chand, reported in (1997) 7 SCC 756, the accused was below the age of 21 and, therefore, provision of section 360 of the Code read with section 4 of the Probation of Offenders Act, 1958 was proposed into service. That matter was related to offence punishable under section 376 read with section 511 of IPC.

10.2. In Vaija Srinivasu v. State of A.P., reported in (2002) 9 SCC 620, the matter was related to an offence under the NDPS Act wherein the provisions of Probation of Offenders Act could not be pressed into service. However, the age of the accused at the time of framing of charge was below 21 years and, therefore, the sentence was reduced from two years to one year.

10.3. The case of Dalbir Singh v. State of Haryana, reported in (2000) 5 SCC 82, again a matter related to offence under section 304-A of IPC. There it was

mentioned that the provisions contained in section 4 of the Probation of Offenders Act, 1958 was a matter of discretion of the Court. That the said benefit cannot be made available to accused persons unless the court forms an opinion that it is expedient to do so. It would be relevant to refer to paras 1 and 13 of the said pronouncement as follows:

"1. When automobiles have become death traps any leniency shown to drivers who are found guilty of rash driving would be at the risk of further escalation of road accidents. All those who are manning the steering of automobiles, particularly professional drivers, must be kept under constant reminders of their duty to adopt utmost care and also of the consequences befalling them in cases of dereliction. One of the most effective ways of keeping such drivers under mental vigil is to maintain a deterrent element in the sentencing sphere. Any latitude shown to them in that sphere would tempt them to make driving frivolous and a frolic.

13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304-A of the PO Act. While considering the quantum of sentence to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly, that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of the vehicle he cannot escape from a jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of

automobiles."

11. In the present case also we find that the road accidents and victims of road accidents are on increase. It may be due to increase in the strength of vehicles running on the road, it may be because of the increased population, it may be on account of the increased negligence on the part of the drivers. Sometimes, it may be on account of the adverse road condition, sometimes it also happens on account of good condition of the road where the drivers are found negligent. Any way, it cannot be disputed or challenged that the road accidents have increased and with the increase in the road accidents, the sufferers have also increased to a great extent. Therefore, if deterrent effect is not consistently maintained, then again there would be high increase of road accidents. It is required to be considered that the maximum punishment for offence under section 304-A of IPC is only two years. Therefore, when the maximum punishment is inflicted then also it is very ridiculous in light of the background of the fact that the persons going on public streets and roads also on Highways are found to be unsafe. It is required to be considered here that the maximum punishment awarded by the trial court is for offence under section 304-A of IPC and as per the order of the trial court only two months S.I. has been inflicted. Considering the nature of the offence committed by the petitioner and considering the quantum of punishment awarded by the trial court and considering the aforesaid decision of the Supreme Court in the case of Dalbir Singh v. State of Haryana (supra), I am of the opinion that the petitioner does not deserve any special mercy more than what has been shown to him by the trial court. Since the State has not filed any judicial proceeding for enhancement of the punishment, it would not be appropriate for this court to enhance the said punishment. It is moreso, when the matter was first taken to the Sessions Court and then it has come here. Therefore, even on a close scrutiny of the aforesaid four decisions cited by the learned Advocate for the petitioner, I am of the view that it is not necessary, just or proper to interfere with the quantum of punishment inflicted by the trial court.

12. For the foregoing reasons, there appears to be no merit in the present revision application and the same deserves to be dismissed. Consequently this revision application is ordered to be dismissed. Rule discharged.

The petitioner is on bail. Therefore, his bail bonds are cancelled and hence he will forthwith surrender

to the custody. The trial court shall immediately take steps of issuing non-bailable warrant to the accused and intimation to the surety/sureties so that the petitioner can serve out the remaining sentence.

24.3.2003 [D P Buch, J.]
msp

FURTHER ORDER

Learned Advocate for the petitioner has requested to grant time to the petitioner to surrender, after pronouncement of the aforesaid order dismissing the revision application of the petitioner. In support of the said request, he has relied upon a judgment in the case of Mahadev B Patel v. State of Gujarat, reported in 2001 (4) GLR 3424, wherein the petitioner was granted two months' time to surrender to the custody of the learned Magistrate. It seems that the law does not provide for grant of such time. On the contrary, a provision has been made that when the trial court convicts any accused person, then the said trial court can suspend the substantive sentence imposed on the accused person, with a view to enable the accused to prefer appeal. No such provision is made when the appeal is dismissed by the appellate court. Same way, no such provision has been made when the Court of revision dismissed Criminal Revision Application. It is also argued by Mr B D Karia, learned Advocate for the petitioner that the precedents are both ways. When there is no consistent precedent, there is no eason to grant time to surrender. Even considering the facts of the case also, it is not a fit case for granting time. Therefore, the request is rejected.

24.3.2003 [D P Buch, J.]
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